

RUSS JOURNIGAN

IBLA 74-163

Decided June 26, 1974

Appeal from decision of State Office, Sacramento, California, Bureau of Land Management, declaring mining claim (CA-665) null and void in part.

Affirmed as corrected.

Patents of Public Lands: Effect

A patent issued under authority of law vests title in the patentee and removes the land from the jurisdiction of Department of the Interior.

Mining Claims: Generally – Mining Claims: Land Subject to – Mining Claims: Withdrawn Land – Withdrawals and Reservations: Reclamation Withdrawals

A mining claim located upon land subject to first form of reclamation withdrawal and not open to mineral entry is void ab initio.

APPEARANCES: Russ Journigan, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Russ Journigan has appealed to the Board of Land Appeals from a decision of the State Office, Sacramento, California, Bureau of Land Management, dated October 12, 1973, declaring the Truckee Chief No. 1 placer mining claim null and void in part. The decision cited State Office records which show that part of the land on which the claim is situated (N 1/2 SE 1/4 sec. 32, T. 18 N., R. 17 E., M.D.M.) was withdrawn pursuant to Sec. 3 of the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), by Departmental Orders of July 2, 1902, and July 9, 1904, for reclamation purposes in connection with the Truckee-Carson Project.

By Public Land Order 4123 of December 29, 1966, the Departmental Orders cited above were revoked so far as they affected the NW 1/4 SE 1/4 and the W 1/2 W 1/2 W 1/2 NE 1/4 SE 1/4 of sec. 32, T. 18 N., R. 17 E., M.D.M., as well as other lands not involved in this case. There has been no revocation of the reclamation withdrawal as to the balance of the N 1/2 SE 1/4 of sec. 32.

On July 12, 1967, the NW 1/4 SE 1/4 and the W 1/2 W 1/2 W 1/2 NE 1/4 SE 1/4 were patented to the San Francisco Fly Casting Club, without reservation of minerals. 1/

The Truckee Chief No. 1 placer mining claim was not located until September 2, 1967. At that time the patented portion of the N 1/2 SE 1/4 was no longer within the jurisdiction of this Department because a title was in the patentee. Bryan N. Johnson, 15 IBLA 19 (1974); Everett Elvin Tibbets, 61 I.D. 397 (1954).

The remainder of the N 1/2 SE 1/4, unaffected by the revocation of the reclamation withdrawal, continued to be subject to the withdrawal at the time of the purported location. 2/

It is well established that a mining claim located on land on a date when the land was subject to a first form reclamation withdrawal and not open to mineral entry is void ab initio. A. L. Snyder, 75 I.D. 33 (1968). Such a location initiates no right in the locator and is invalid from its purported inception. Frank Zappia, 10 IBLA 178 (1973). Cf. M. G. Johnson, 2 IBLA 106, 78 I.D. 107 (1971).

Appellant's contention that he was not allowed sufficient time to substantiate his claim is to no avail. Even if he could prove a valuable mineral deposit within the withdrawn area, no location could be validated under the mining laws. The other arguments of appellant have been reviewed but do not change the result.

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1/ In its decision, the State Office states the balance of the N 1/2 NE 1/4 was patented under Forest Exchange Sacramento 079399 to the San Francisco Fly Casting Club. The correct description apparently should read: "the balance of the N 1/2 SE 1/4."

2/ We note that the State Office specifies that the E 1/2 W 1/2 W 1/2 W 1/2 NE 1/4 SE 1/4 (among other lands) was subject to the reclamation withdrawal on the date of the purported location. This conflicts with the Federal Register notice specifying the lands affected by the revocation of the reclamation withdrawal, and the description of the patented lands. The correct description of the land that remained withdrawn is the E 1/2 W 1/2 W 1/2 NE 1/4 SE 1/4.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as corrected.

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Joseph W. Goss  
Administrative Judge

We concur.

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Edward W. Stuebing  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

